IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

MFA.No. 1067 of 2001(B)

OPMV.230/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA

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APPELLANT: 3RD RESPONDENT

NATIONAL INSURANCE COMPANY LTD.
PALA BRANCH, PALA REPRESENTED BY ITS
REGIONAL OFFICE ANNEXE,M.G.ROAD, KOCHI.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: CLAIM PETITIONERS & RESPONDENTS 1,2,4 & 5

1. K.J.MATHAI,
   KUNNAPALLIL HOUSE, VIZHICKATHODE POST, KARIMPUKAYAM.

2. SUNIL MATHEW
   KUNNAPALLIL HOUSE, VIZHICKATHODE POST, KARIMPUKAYAM.

3. ROY MATHEW
   KUNNAPALLIL HOUSE, VIZHICKATHODE POST, KARIMPUKAYAM.

4. ANIL MATHEW
   KUNNAPALLIL HOUSE, VIZHICKATHODE POST, KARIMPUKAYAM.

5. SHERLY MATHEW
   KUNNAPALLIL HOUSE, VIZHICKATHODE POST, KARIMPUKAYAM.

6. VARGHESE@ JOSE, S/O. MATHAI
   CHUCKANANICKAL (H), 3RD MILE BHAGAM, CHIRACKADAVU POST, KOTTAYAM

7. SAJIKUMAR, S/O.T.C.BHASKARAN NAIR
   KANNACHENYUNNEL HOUSE, PONKUNNAM POST.

8. SURESH MATHEW
   KUNNAPALLIL HOUSE, SUMANGALA STUDIO, CHIRACKADAVU EAST POST
   MANNANPLAVU JUNCTION.

9. ROBIN ABRAHAM
   MUNDICKATTUKANDATHIL, KANJIRAPPALLY POST.

BY ADV. SRI.NOBLE MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/01/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA1067/2001

ORDER ON CMP NO. 7685/2001 IN M.F.A.NO. 1067/2001

DISMISSED.

Sd/-

5.1.2007 K.T.SANKARAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.T.SANKARAN, J

M.F.A.No. 1067 of 2001

Dated this the 5th day of January, 2007

JUDGMENT

This appeal is filed by the insurer against the order passed by the Tribunal under Section 140 of the Motor Vehicles Act. The claim was put forward by the legal representatives of deceased Thresiamma. Thresiamma was travelling in an Autorikshaw on 8.7.1997 which met with an accident and Thresiamma sustained injuries. She was admitted in the hospital as an inpatient till 11.7.1997. It is stated by the claimants that Thresiamma was again treated as inpatient from 21.10.1997 to 29.10.1997 and that she was admitted again on 12.11.1997. On 13.11.1997 she was referred to Medical College Hospital, Kottayam and on her way to the hospital she died.

2. As per the order impugned, the Tribunal passed an interim award directing the insurer to remit a sum of Rs.50,000/-. O.P.(MV) No. 230/98 was later disposed of finally as per the award dated 14.1.2004 and the Tribunal awarded only a sum of Rs.36,100/- as compensation. It was held by the Tribunal

that the evidence adduced by the petitioners was not sufficient to prove that Thresiamma died due to the injuries sustained in the accident. The Tribunal relied on Ext. A8 postmortem certificate wherein it was found that the injury sustained by Thresiamma was not sufficient to cause her death. The Tribunal came to the conclusion that compensation can be awarded only for the injuries sustained by Thresiamma and not on account of her death. Accordingly, the Tribunal fixed the compensation at Rs.36,100/-.

3. Since the Tribunal has now found on evidence that the death of Thresiamma was not as a result of the accident, I am inclined to accept the contentions raised by the appellant that the Tribunal was not justified in passing an award under Section 140 of the Motor Vehicles Act.

The appeal is allowed and the order impugned is therefore set aside.

K.T.SANKARAN,
JUDGE

csl